

## Securities and Exchange Commission

## § 204.51

new paying agency before collection can be resumed.

(b) *Responsibility of the Commission as the paying agency*—(1) *Complete claim*. When the Commission receives a properly certified claim from a creditor agency, deductions should be scheduled to begin at the next officially established pay interval. The Commission must notify the employee in writing that the Commission has received a certified debt claim from the creditor agency (including the amount) and the date salary offset will begin and the amount of such deductions.

(2) *Incomplete claim*. When the Commission receives an incomplete certification of debt from a creditor agency, the Commission must return the debt claim with notice that procedures under 5 U.S.C. 5514 and subpart B of this part must be provided and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(3) *Review*. The Commission is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) *Employees who transfer from one paying agency to another*. If, after the creditor agency has submitted the debt claim to the Commission and before the Commission collects the debt in full, the employee transfers to another agency, the Commission must certify the total amount collected on the debt. One copy of the certification must be furnished to the employee and one copy to the creditor agency along with notice of the employee's transfer.

(c) *Responsibility of the Program Official*. (1) The Program Official shall coordinate debt collections and shall, as appropriate:

(i) Arrange for a hearing upon proper petition by a federal employee; and

(ii) Prescribe, upon consultation with the General Counsel, such practices and procedures as may be necessary to carry out the intent of this regulation.

(2) The Program Official shall be responsible for:

(i) Ensuring that each certification of debt sent to a paying agency is con-

sistent with the pre-offset notice (§204.33, Pre-offset notice).

(ii) Obtaining hearing officials from other agencies pursuant to §204.36, Granting of a pre-offset hearing.

(iii) Ensuring that hearings are properly scheduled.

### § 204.44 Interest, penalties, and administrative costs.

Charges may be assessed for interest, penalties, and administrative costs in accordance with the Federal Claims Collection Standards, 4 CFR 102.13.

## Subpart C—Tax Refund Offset

AUTHORITY: 5 U.S.C. 8347(a) and 8461(g), 31 U.S.C. 3720A.

SOURCE: 58 FR 64372, Dec. 7, 1993, unless otherwise noted.

### § 204.50 Purpose.

This subpart establishes procedures for the Commission to refer past-due legally enforceable debts to the Internal Revenue Service (IRS) for offset against the income tax refunds of an individual, sole proprietorship, partnership, corporation, nonprofit organization or any other form of business association, (31 U.S.C. 3720A(4)) owing debts to the Commission. In the case of refunds of business associations, this section applies only to refunds payable on or after January 1, 1995 (31 U.S.C. 3720A(5)). It specifies the agency procedures and the rights of the debtor applicable to claims referred under the Federal Tax Refund Offset Program for the collection of debts owed to the Commission.

### § 204.51 Past-due legally enforceable debt.

A past-due legally enforceable debt for referral to the IRS is a debt that:

(a) Resulted from:

(1) Erroneous payments made under the Civil Service Retirement or the Federal Employees' Retirement Systems; or

(2) Unpaid health or life insurance premiums due under the Federal Employees' Health Benefits or Federal Employees' Group Life Insurance Programs; or

(3) Any other statute administered by the Commission;

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- (b) Is an obligation of a debtor;
- (c) Except in the case of a judgment debt, has been delinquent at least three months but not more than ten years at the time the offset is made;
- (d) Is at least \$25.00;
- (e) With respect to which the individual's rights described in the collection of debts owed to the Civil Service Retirement and Disability Fund (5 CFR 831.1301 through 831.1309) have been exhausted;
- (f) With respect to which either:
  - (1) The Commission's records do not contain evidence that the person owing the debt (or his or her spouse) has filed for bankruptcy under title 11 of the United States Code; or
  - (2) The Commission can clearly establish at the time of the referral that the automatic stay under 11 U.S.C. 362 has been lifted or is no longer in effect with respect to the person owing the debt or his or her spouse, and the debt was not discharged in the bankruptcy proceeding;
- (g) Cannot currently be collected under the salary offset provisions of 5 U.S.C. 5514(a)(1);
- (h) Is not eligible for administrative offset under 31 U.S.C. 3716(a) because of 31 U.S.C. 3716(c)(2), or cannot currently be collected as an administrative offset by the Commission under 31 U.S.C. 3716(a) against amounts payable to the debtor by the Commission; and
- (i) Has been disclosed by the Commission to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless the consumer reporting agency would be prohibited from reporting information concerning the debt by reason of 15 U.S.C. 1681c, or unless the amount of the debt does not exceed \$100.

### § 204.52 Notification of intent to collect.

- (a) *Notification before submission to the IRS.* A request for reduction of an IRS income tax refund will be made only after the Commission makes a determination that an amount is owed and past-due and gives or makes a reasonable attempt to give the debtor 60 days written notice of the intent to collect by IRS tax refund offset.
- (b) *Contents of notice.* The Commission's notice of intent to collect by IRS

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tax refund offset (Notice of Intent) will state:

- (1) The amount of the debt;
- (2) That unless the debt is repaid within 60 days from the date of the Commission's Notice of Intent, the Commission intends to collect the debt by requesting the IRS to reduce any amounts payable to the debtor as a Federal income tax refund by an amount equal to the amount of the debt and all accumulated interest and other charges;
- (3) A mailing address for forwarding any written correspondence and a contact name and a telephone number for any questions; and
- (4) That the debtor may present evidence to the Commission that all or part of the debt is not past due or legally enforceable by:
  - (i) Sending a written request for a review of the evidence to the address provided in the notice;
  - (ii) Stating in the request the amount disputed and the reasons why the debtor believes that the debt is not past due or is not legally enforceable; and
  - (iii) Including in the request any documents that the debtor wishes to be considered or stating that the additional information will be submitted within the remainder of the 60-day period.

### § 204.53 Reasonable attempt to notify.

In order to constitute a reasonable attempt to notify the debtor, the Commission must have used a mailing address for the debtor obtained from the IRS pursuant to 26 U.S.C. 6103(m)(2) within a period of one year preceding the attempt to notify the debtor, unless the Commission received clear and concise notification from the debtor that notices from the agency are to be sent to an address different from the address obtained from IRS. Clear and concise notice means that the debtor has provided the agency with written notification, including the debtor's name and identifying number (as defined in 26 CFR 301.6109-1), and the debtor's intent to have the agency notices sent to the new address.